Supreme Court of the United States.

No. 507.—October Term, 1902.

The Davis and Farnum Manufacturing Company, Appellant, vs. The City of Los Angeles.	On appeal from the Circuit Court of the United States for the Southern District of California.

[March 2, 1903.]

This was a bill in equity filed in the Circuit Court for the Southern District of California by appellant, a citizen of Massachusetts, to restrain the city of Los Angeles and its officers from enforcing certain municipal ordinances, prohibiting the erection or maintenance of gas tanks or reservoirs within certain portions of the city.

The gravamen of the bill was that on September 1, 1901, Caroline W. Dobbins made a contract with the Valley Gas and Fuel Company, a California corporation, to build certain gas works for her, including all things necessary for the manufacture, recovery and storage of gas, on lands thereafter to be designated; that on September 17 the appellant made a contract with the Gas and Fuel Company to erect upon Mrs. Dobbins' premises a water tank and gas holder, having a capacity of 100,000 cubic feet of gas, and that immediately thereafter it constructed and prepared the material and machinery necessary for the erection of the tank and gas holder, and shipped the same to Los Angeles; that on September 28, Mrs. Dobbins purchased certain lands in Los Angeles, which were within the limits wherein it was lawful to erect gas works as described in a municipal ordinance adopted August 26, 1901, and on November 1 applied to the board of fire commissioners for a permit to erect such gas works; that on November 22, her petition came on for hearing before the fire commissioners, and after proof had been made that all provisions of prior ordinances had been complied with, the matter was duly considered, and finally resulted, November 29, in a vote to grant a permit to erect and maintain the gas works.

That upon the 22d day of November, Mrs. Dobbins' contractors began at once to lay the foundation for said works at a cost of upwards of $2,500, when on November 25, the city adopted an ordinance, amending that of August 26, 1901, including her property in the prohibited territory for the erection or maintenance of gas works, which ordinance, however, seems to have proved defective, and subsequently in February, 1902, caused certain of the employés of the Gas and Fuel Company to be arrested, charging them

with a violation of this ordinance. Subsequently under new proceedings certain employés of the plaintiff were arrested and the work stopped.

Another ordinance was passed on March 3, 1902, also amending that of August 26, 1901, and other arrests were made of the employés for a violation of this ordinance. It was averred that the gas works are in an uncompleted condition, exposed to the elements and in danger of being destroyed, and that all of the aforesaid ordinances were adopted by the common council at the instigation of the Los Angeles Light Company, which has enjoyed a monopoly of the gas business for the last ten years.

A demurrer was filed to this bill by the city for want of equity and of jurisdiction, which was sustained by the court, and the bill dismissed. (115 Fed Rep. 537,) apparently upon the ground that a court of chancery has no power to restrain criminal proceedings, unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there. Whereupon an appeal was taken to this court.

Mr. Justice BROWN delivered the opinion of the Court.

As the bill in this case is based not only upon diversity of citizenship, but upon the alleged unconstitutionality of the municipal ordinances of November 25, 1901, and March 3, 1902, as impairing the obligation of Mrs. Dobbins' contract with the city under prior ordinances, an appeal lies directly to this court, and upon such appeal the whole case is opened for consideration. (*Horner* v. *United States*, 143 U. S. 570; *Chappell* v. *United States*, 160 U. S. 499.) The State having delegated certain powers to the city, the ordinances of the municipal authorities in this particular are the acts of the State through one of its properly constituted instrumentalities, and their unconstitutionality is the unconstitutionality of a State law within the meaning of section 5 of the Circuit Court of Appeals act. (*City Railway Co.* v. *Citizens' R. R. Co.*, 166 U. S. 557; *Penn Mutual Life Insurance Co.* v. *Austin*, 168 U. S. 685, 694; *St. Paul Gas Light Co.* v. *St. Paul*, 181 U. S. 142, 148.)

2. The court below did not pass upon the validity of these ordinances, but came to the conclusion that a bill in equity would not lie to restrain their enforcement, and in this aspect we shall discuss the case. As the only method employed for the enforcement of these ordinances was by criminal proceedings, it follows that the prayer of the bill to enjoin the city from enforcing these ordinances, or prevent plaintiff from carrying out its work, must be construed as demanding the discontinuance of such criminal proceedings as were already pending, and inhibiting the institution of others of a similar character.

That a court of equity has no general power to enjoin or stay criminal proceedings unless they are instituted by a party to a suit already pending

before it, and to try the same right that is in issue there, or to prohibit the invasion of the rights of property by the enforcement of an unconstitutional law, was so fully considered and settled in an elaborate opinion by Mr. Justice Gray, (*In re Sawyer*, 124 U. S. 200,) that no further reference to prior authorities is deemed necessary, and we have little more to do than to consider whether there is anything exceptional in the case under consideration to take it out of the general rule. The plaintiff in the case of Sawyer sought to restrain the mayor and committee of a city in Nebraska from removing a city officer under charges filed against him for malfeasance in office. This was held to fall within the general rule and not within the exception.

The general rule that a Circuit Court of the United States, sitting as a court of equity, cannot stay by injunction proceedings pending in a State court to enforce the criminal laws of such State, was applied in *Harkrader* v *Wadley*, (172 U. S. 148,) to a case where the plaintiff sought to enjoin proceedings against him for the embezzlement of the assets of a bank; and in *Fitts* v. *McGee*, (172 U. S. 516,) to a suit brought by the receiver of a railroad against the attorney general of the State to restrain him from instituting or prosecuting criminal proceedings to enforce against the plaintiff the provisions of a State law reducing the tolls, which had been exacted of the public by the railroad, of which the plaintiff was receiver. This was held to be in reality a suit against the State to enjoin the institution of criminal proceedings, and hence within the general rule. See also *Prout* v. *Starr*, *ante*, p.

Plaintiff seeks to maintain its bill under the exception above noted, wherein, in a few cases, an injunction has been allowed to issue to restrain an invasion of rights of property by the enforcement of an unconstitutional law, where such enforcement would result in irreparable damages to the plaintiff. It cites in that regard the case of *Reagan* v. *Farmers' Loan & Trust Co.*, (154 U. S. 362,) in which, under a law of Texas giving express authority to a railroad company or other party in interest to bring suit against the railroad commissioners of that State, a bill was sustained against such commission to restrain the enforcement of unreasonable and unjust rates, and in the opinion a few instances were cited where bills were sustained against officers of the State, who, under color of an unconstitutional statute, were committing acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the State. It would seem that, if there were jurisdiction in a court of equity to enjoin the invasion of property rights through the instrumentality of an unconstitutional law, that jurisdiction would not be ousted by the fact that the State had chosen to assert its power to enforce such law by indictment or other criminal proceeding. (*Springhead Spinning Co.* v. *Riley*, L. R. 6 Eq. 558.)

In order to determine the exact property rights at stake in the case under consideration it should be borne in mind that this is not a bill by Mrs. Dobbins, the owner of the land and of the proposed gas works, to enjoin the city from interfering with carrying out the permit she had obtained to erect these gas works, nor by the Valley Gas and Fuel Company, with which she had made a contract to erect these works; but by a sub-contractor, which had made a contract with the Gas and Fuel Company to erect for *it*, and upon premises to be designated by Mrs. Dobbins, a water tank and gas holder; and, without even alleging that the Gas and Fuel Company had refused to carry out its contract, or pay to plaintiff damages, or that Mrs. Dobbins had refused to settle any claim the Gas and Fuel Company might have against her, seeks to enjoin the city of Los Angeles in the assumed right of Mrs. Dobbins from interfering with its servants and employés, and from preventing plaintiff from carrying out the work of erecting the water tank and gas holder, and also to desist and refrain from enforcing its ordinances. It sets up no contract of its own with the city which the municipal ordinances have impaired, but a contract of the city with Mrs. Dobbins, to which it was no party, in which it had no direct interest, and that, too, without averring that the Gas and Fuel Company was insolvent, or unable to respond to its claim for damages. It proceeds wholly upon the assumption that the revocation of Mrs. Dobbins' license will operate injuriously to it, and that it cannot obtain a full and adequate remedy at law by an action against the Gas and Fuel Company upon its contract to pay the price agreed upon between them.

It is true the bill is based upon the theory that plaintiff would suffer great and irreparable loss by the interference of the city and by the exposed condition of the works, and that the refusal of an injunction would result in innumerable actions at law and a multiplicity of suits, which would have to be instituted at great expense and without the possibility of recovering indemnity. We are not, however, bound by this allegation, when the facts set forth in the bill show that, if the plaintiff be entitled to a remedy at all, it has an action against the Gas and Fuel Company, which is presumed at least to be able to respond in damages for all such as plaintiff may have suffered by the interruption of the contract. Whether the Gas and Fuel Company in such action could defend upon the ground that the municipality had forbidden the prosecution of the work, might depend somewhat upon the terms of the contract, and upon the right of the Gas and Fuel Company to take advantage of the interference of the city. As to this we express no opinion. It is true the employés of the plaintiff were arrested, but that fact alone wrought no legal injury to the plaintiff, since if it were prevented from any cause for which the Gas and Fuel Company were chargeable, it might bring an action for damages against that company, with which alone its contract was made, and recover such damages as it could prove to have sustained.

It is true that in a number of cases bills have been sustained by one or more stockholders in a corporation against the corporation and other parties, to restrain the enforcement of an unconstitutional law against the corporation itself, but it has always been held, and general equity rule 94 requires, that such bill must contain an allegation under oath that the suit is not a collusive one to confer on a court of the United States jurisdiction, and must also contain an allegation that the directors of a corporation have refused to institute the proceedings themselves in the name of such corporation, and the efforts of the plaintiff to secure such action on the part of the directors, and the cause of his failure to obtain it. (*Dodge* v. *Woolsey*, 18 How. 331; *Hawes* v. *Oakland*, 104 U. S. 450; *Corbus* v. *Alaska Co.*, 187 U. S.) This rule, however, has no application to subcontractors who stand in no position to enforce the right of their immediate contractors, such as was the Gas and Fuel Company, or of the owner of the property who had agreed with such immediate contractors to do the work. The plaintiff in this case stands practically in the position of one who seeks to take advantage of the unconstitutionality of a law in which it has only an indirect interest, and by the enforcement of which it has suffered no legal injury. In this it stands much in the position of the plaintiff in *Tyler* v. *Court of Registration*, (179 U. S. 405,) and in *Turpin* v. *Lemon*, (*ante*, p. ;) *In re Wellington*, (16 Pick. 87, 96;) *Sinclair* v. *Jackson*, (8 Cow. 543;) *Jones* v. *Black*, (48 Ala. 540;) *Shehane* v. *Bailey*, (110 Ala. 308;) *Dejarnett* v. *Haynes*, (23 Miss. 600.)

In this connection, also, the appellant cites the case of *Reagan* v. *Farmers' Loan & Trust Co.*, (154 U. S. 362, 393,) in which we held that the trustee of the bondholders of a railway corporation could maintain a suit against the State railway commission to restrain the enforcement of unreasonable and unjust rates. The case, however, was put upon the express ground that the bondholders were the equitable and the beneficial owners of the property of the corporation, and in that capacity might "invoke the judgment of the Federal courts as to whether the contract rights created by the charter, and of which it is the beneficial owners, are violated by subsequent acts of the State in limitation of the right to collect tolls." In that case the bondholders were not only the beneficial owners of the property, but a reduction of the tolls might have resulted in the practical destruction of their securities, and unless the bill were maintained they were practically remediless. The case has but a remote analogy to the one under consideration.

As the appellant has shown no legal interest in this litigation, and no lack of a complete and adequate remedy at law, it results that the bill was properly dismissed, and the decree of the court below is therefore

Affirmed.